IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 23RD NOVEMBER 2006 / 2ND AGRAHAYANA 1928

Crl.MC.No. 3873 of 2006()

AGAINST THE ORDER IN CC 63/2006 IN
CC.491/2005 of JUDL.MAGISTRATE OF FIRST CLASS COURT-I, PATHANAMTHITTA

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PETITIONER: ACCUSED

RENJITH S. RAJAN, AGED 22,
S/O. SOMARAJAN, ERANNUR HOUSE,
KURIANNOOR P.O., PATHANAMTHITTA DIST.,
THIRUVALLA.

BY ADV. SRI.N.N.SASI

RESPONDENTS:

STATE OF KERALA - REPRESENTED BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.A.AKBAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3873 of 2006

Dated this the 23rd day of November 2006

O R D E R

The petitioner, allegedly a student, who faces indictment for offences punishable interalia under Section 332 I.P.C prays that the prosecution against him may be quashed.

2. The petitioner was an indictee along with seven other accused persons. The petitioner did not appear and was not available for trial. In these circumstances, the learned Magistrate proceeded with the trail against six out of the eight co-accused. The case against the petitioner and the other was split up. They were shown to be absconding. After trial, by the judgment in C.C.No.491/2005, all the accused who could be tried, were found not guilty and acquitted. The case against the petitioner and the other was split up.

3. The petitioner submits that he was not deliberately absconding. He was a student at the relevant time. The allegations have been raised against him falsely. In the case against the co-accused, there is no evidence to implicate the petitioner also. In these circumstances, the petitioner may be saved of the trauma of an unnecessary prosecution. Continuance of the prosecution against the petitioner may not be permitted. Invoking the powers under Section

482 Cr.P.C, proceedings against him may be quashed, it is prayed.

4. It is trite now, as per the judgment in Moosa vs. Sub Inspector of Police [2006(1) KLT 552] (FB) that the acquittal of the co-accused does not, by itself, provide a sufficient ground to invoke the inherent jurisdiction under Section 482 Cr.P.C to quash the proceedings against the accused, who have not faced trial. In the prosecution against the co-accused, certainly the prosecutor is not bound, obliged or expected to adduce evidence against the petitioner. In these circumstances, the fact that the co-accused have been acquitted or the fact that witnesses in that trial against the co-accused have not implicated the petitioner, cannot certainly be a sufficient ground to invoke the powers under Section 482 Cr.P.C.

5. I am of the opinion that the petitioner must certainly appear before the learned Magistrate. He must then seek discharge if it is his case that there is no material placed before the court by the investigating officer along with the 173 report to justify the framing of charge against him. In any view of the matter, I am satisfied that this is not a fit case where the extraordinary inherent jurisdiction under Section 482 Cr.P.C can or ought to be invoked.

6. The learned counsel for the petitioner submits that the petitioner, a student, has already appeared before the learned

Magistrate and has applied for bail. The counsel submits that bail has neither been granted nor has the petitioner been remanded. I am unable to understand that situation. However, I am satisfied that a direction can be issued that if the petitioner appears before the learned Magistrate and applies for bail, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself. I do further observe that the petitioner, after such appearance, will certainly be entitled to claim discharge. The learned Magistrate must consider such claim for discharge and proceed expeditiously to take appropriate decision on the question of framing charge.

7. With the above observations/directions, this Crl.M.C is dismissed.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006